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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/842,371 04/25/2001		Diane C. Breidenbach		6561
75	90 11/29/2005		EXAMINER	
Thomas A. O'Rourke			NGUYEN, TUAN N	
BODNER & O'l 425 Broadhollo		ART UNIT	PAPER NUMBER	
Melville, NY	11747	3751		

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

1					W			
		Applic	ation No.	Applicant(s)				
Office Action Summary		09/842	2,371	BREIDENBACH E	ET AL.			
		Exami	ner	Art Unit				
			N. Nguyen	3751				
The MAI Period for Reply	LING DATE of this commun	nication appears on	the cover sheet	with the correspondence ac	idress			
WHICHEVER IS - Extensions of time after SIX (6) MONT - If NO period for rep - Failure to reply with Any reply received	S LONGER, FROM THE N may be available under the provision: HS from the mailing date of this come	MAILING DATE OF s of 37 CFR 1.136(a). In no munication. tatutory period will apply ar y will, by statute, cause the	THIS COMMUN o event, however, may nd will expire SIX (6) Mi application to become	a reply be timely filed ONTHS from the mailing date of this c ABANDONED (35 U.S.C. § 133).				
Status								
1)⊠ Responsi	ve to communication(s) file	ed on <i>07 Novembe</i>	<u>r 2005</u> .					
2a) This action is FINAL . 2b) This action is non-final.								
,	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.							
Disposition of Cla	ims							
4a) Of the 5) ☐ Claim(s) ☐ Claim(s) ☐ 7) ☐ Claim(s)	1-50 is/are pending in the above claim(s) 32-39 is/a is/are allowed. 1-31 and 40-50 is/are rejection is/are objected to. are subject to restri	re withdrawn from						
Application Paper	s							
9)☐ The specif	fication is objected to by th	ne Examiner.						
10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.								
• •	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
•	• • • • • • • • • • • • • • • • • • • •			ng(s) is objected to. See 37 C ed Office Action or form P				
Priority under 35 l	J.S.C. § 119							
12) Acknowled a) All b) 1. Ce 2. Ce 3. Co app	dgment is made of a claim Some * c) None of: rtified copies of the priority rtified copies of the priority	documents have to documents have to of the priority docu nal Bureau (PCT)	peen received. peen received in uments have bee Rule 17.2(a)).	Application No en received in this National	Stage			
Attachment(s) 1) Notice of Referen	ces Cited (PTO-892)		4) N Interview	v Summary (PTO-413)				
2) Notice of Draftspe	erson's Patent Drawing Review (osure Statement(s) (PTO-1449 o		Paper N	o(s)/Mail Date f Informal Patent Application (PT	O-152)			

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DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species I: Fig. 2 in the reply filed on November 07, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The applicant further indicates that claims 1-31 and 40-50 are readable thereon; accordingly, claims 32-39 are hereby withdrawn from further consideration.

Response to Arguments

2. Applicant's arguments with respect to claims 1-31, 40 and 41 have been considered but are most in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 48-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "a rollerball" in line 2 of claim 48 appears to be a double inclusion of "a rollerball" in line 4 of claim 42; therefore, it is unclear as to the differences between them.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4, 6, 7, 42 and 48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Sakwa.

Sakwa discloses a dual ended container (see Fig. 4) comprising a sleeve (12) that has a first end (about 26) and a second end (about 28), each of the ends being adapted to receive a receptacle (about 16, about 50) for containing a product and wherein the product in the first receptacle is different from the product in the second receptacle and at least one of the receptacles has a rollerball applicator (14) for dispensing product from that receptacle. The sleeve has a first section and a second section which are connected by a sidewall (22), the first section and the second section being opened at each of said ends and is capable of receiving an opened end of a receptacle which contains a product. The sleeve and the receptacles have a cross section of the same shape, wherein the center axis of each end section is the same and wherein the center axis of the sleeve and each of the receptacles are the same.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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5. Claims 1-31 and 40-50 rejected under 35 U.S.C. 103(a) as being unpatentable over Roehrich in view of US Patent 5,586,694 (hereinafter Breidenbach), Costa, or Pieper et al. (hereinafter Pieper), or any combination thereof.

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Roehrich discloses a dual ended container (see Fig. 1) comprising a sleeve (middle piece between the top and bottom piece) that has first and second ends, each of the ends being adapted to receive a receptacle (the top and bottom piece) for containing a product (such as perfume or the like) and wherein the product in the first receptacle could be different from the product in the second receptacle depend on the user wishes. The sleeve could obviously have a first section and a second section, which are connected by a sidewall (if not already) such that taught by Costa partition wall (1a). At least or only one of the receptacles can have a rollerball applicator (if not already) for dispensing product from that receptacle similar to the rollerball applicator of Breidenbach (see Fig. 5 of Breidenbach). The other claimed features such as the center axis and the cross section shape are clearly anticipated by Roehrich. Furthermore, the intended use with different product and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over the device that disclosed by Roehrich which is certainly capable of being used in the claimed manner such as with a receptacle with a mascara brush as for example discloses by Costa or a doe foot applicator as for example discloses by Pieper.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Planka discloses another rollerball cosmetic applicator and Gueret discloses an applicator for different materials, which could also be powder.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan Ngyyen

Primary/Ekaminer

Art Unit 3751

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